

Appl. No. : 10/780,780
Filed : February 18, 2004

REMARKS

This is in response to the Office Action mailed November 8, 2005. By this Response, Applicant has canceled Claims 1-13 and added new Claims 20-28, such that Claims 20-28 are the only claims pending in the application.

Request to Withdraw Finality of Action

Applicant requests that the Examiner withdraw the “finality” of the Office Action. The Examiner indicates that the Office Action was made final because “Applicant’s amendment necessitated the new ground(s) of rejection.” Applicant asserts that this statement is disingenuous and inconsistent with the M.P.E.P. As noted in Applicant’s Response mailed August 29, 2005, “Applicant has amended various of the claims to address antecedent basis issues to ensure the claims satisfy the requirements of 35 U.S.C. §112.” Upon inspection, it is clear that Applicant’s amendments did not change the scope of the claimed subject matter. Quite simply, the claimed subject-matter was novel and non-obvious over the originally cited prior art, and it was this fact, and not any amendments, which caused the Examiner to seek additional prior art which might be pertinent to the claimed subject matter.

Applicant requests that the Examiner withdraw the finality so as to avoid the necessity of filing a petition to that issue.

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New Claims 20-28 Relative to the Newly Cited Prior Art

The Examiner rejected Claims 10 under 35 U.S.C. § 102(e) as being anticipated by Knak (US Publication 2003/0147693). The Examiner rejected Claims 1-3 and 9 under 35 U.S.C. § 103 as being unpatentable over Knak in view of Spiess et al. (USPN 5,340,232). The Examiner rejected Claims 4 and 4 and 5 under § 103(a) as being unpatentable over Knak in view of Spiess in further view of Sharpless (USPN 5849198) and rejected Claim 11 as unpatentable over Knak in view of Sharpless. The Examiner rejected Claims 1, 6, 7 and 10 as unpatentable over Wyatt (USPN 3390224) in view of Boersma (USPN 4655913) and Knak. in view of Dannhauser (USN 4,973,191), and Claims 8, 12 and 13 as unpatentable over than combination in further view of Lukomski (USPN 2190532).

Applicant asserts that new Claims 20-28 are allowable over the prior art.

(1) Prior art of Knak, Spiess and Sharpless

First, relative to the Examiner's rejection based upon Knak, either alone or in combination with another reference, as the Examiner indicates, Knak does not disclose a grate assembly where an upstanding member at least partially overlaps one of the grate bars. Inasmuch as new Claim 20 requires a "grate hold down member which completely encircles at least one of the bars of the grate", Knak can not anticipate new Claims 20-28.

The Examiner cites Spiess and Sharpless as teaching a locking device for a sewer grate, where the locking device at least partially encircles one of the grate bars. The Examiner then asserts it would be obvious to modify Knak's grate assembly with the "partially encircling member" of Spiess or Sharpless. Applicant disagrees.

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In order to establish a *prima facie* case of obviousness, three basic criteria must be met. The first and foremost requirement is that there must be some suggestion or motivation to modify the reference. M.P.E.P. § 2142. Applicant asserts that there is no suggestion to combine the references. As noted by the Federal Circuit, “[a]lthough a reference need not expressly teach that the disclosure contained therein should be combined with another, the showing of combinability, in whatever form, must nevertheless be ‘clear and particular’.” Winner Int’l Royalty Corp. v. Wang, 53 U.S. P.Q. 1580 (Fed. Cir. 2000).

Knak discloses a grate assembly which is specifically designed. In other words, Knak’s design is not applicable to regular grates which are set upon common frames. Instead, Knak discloses a very specific grate assembly which includes a uniquely designed frame (14) which includes a shelf (32), and a specifically designed grate (12) which includes unique cross-bars (16) which support tread bars (18). In this configuration, locking of the grate to the frame is accomplished using a specific locking device (34) which is located below the grate but which is engaged by a bolt 36 extending through a cross-bar (16).

On the other hand, Spiess et al. discloses a manner of connecting a cover/grate to a frame so that the cover/grate may be easily removed and put back into place - not locked. Spiess et al.’s solution is to use a flexible retaining element (6).

These two configurations are wholly incongruous. In that Knak’s configuration provides a specific mechanism for locking the grate to the frame through use of the locking device (34), there is no need for the flexible retainer (6) of Spiess. Relative to Knak’s design, the addition of the flexible retainer (6) would serve no purpose whatsoever, since the grate is already locked to the frame using

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the locking device (34). Knak's design teaches away from such a configuration, in that Knak teaches a specifically designed grate and frame with associated locking device, where the locking device (34) is placed under the grate and is thus inaccessible. Spiess similarly teaches away from such a combination in that Spiess discloses a retaining configuration where the grate is not locked to the frame, and where the frame comprises a unique "spring-clip" type device rather than a complex multi-part lock.

Even if combined in violation of the above-stated principles, this combination of references does not disclose the claimed structure including a grate hold down member which completely encircles at least one of the grate bars, or a locking mechanism where the grate is connected to the frame via a fastener which engages the grate hold down member and a mounting member connected to the grate frame.

In that the base combination of Knak and Spiess is improper, Applicant asserts that rejections based upon those references in further view of Sharpless are improper. Moreover, Applicant asserts that there is no suggestion to combine the teaching of Sharpless to Knak or Spiess or a combination thereof. Sharpless discloses a "T"-shaped bracket. This bracket (52) supports a filter (30) via a chain (40). The "T" shape of the bracket is necessary because the filter (30) is not rigidly connected to bracket or any other member, but may swing on the chain (40). In order to maintain the bracket in position in the event of such motion, the bracket must extend in two directions. There is no need for such a connection in either Knak or Spiess where the connections of the grate to the frame are direct or rigid. Moreover, it is not clear how one would adapt the bracket of Sharpless to either the "spring-clip" type configuration of Spiess or the unique design of Knak.

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(2) Prior Art of Wyatt and Boersma

Wyatt discloses securing a lid (35) with screws (45) that pass therethrough into engagement with a flange (42,43). So secured, there is no need for any other members or forms of connection. Nonetheless, the Examiner asserts that it would be obvious to modify this configuration with the teaching of Boersma. Applicant disagrees. Boersma teaches an adjustable mounting for a drain cover, not a means for locking a drain cover. In that Wyatt already teaches directly connecting a lid with a flange, it serves no purpose to additionally connect the flange to the lid via stirrups.

Further, even if combined, the combination does not result in the invention as claimed. In particular, in the resulting combination, there is no grate hold down member which encircles a grate bar, as claimed in Claim 20. This combination also does not result in the configuration claimed in the dependent claims, such as Claim 2.

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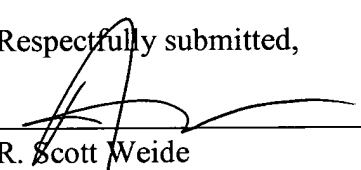
Summary

Applicant asserts that Claims 20-28 are in a condition for allowance and respectfully request a notice as to the same. If any matters remain outstanding, the Examiner is invited to contact the undersigned by telephone.

Dated: January 8, 2006

By: _____

Respectfully submitted,


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